

FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Jan 31, 2024

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JOE ORTEG-MERRITT,

Plaintiff,

v.

YCDOC, WADOC, YAKIMA
COUNTY JAIL-MEDICAL-
ADMIN, and YAKIMA COUNTY
SUPERIOR COURT,

Defendants.

NO: 1:23-CV-3158-RMP

ORDER DISMISSING ACTION

Plaintiff Joe Orteg-Merritt, a prisoner currently housed at the Yakima County Jail, filed this *pro se* civil rights complaint on October 13, 2023. ECF No. 1. On November 21, 2023, the Court granted Plaintiff leave to proceed *in forma pauperis*, advised him of the deficiencies of his complaint, and directed him to amend or voluntarily dismiss the Complaint within sixty (60) days. See ECF Nos. 5 and 6. Specifically, Plaintiff did not name as Defendants any persons amenable to suit under 42 U.S.C. § 1983, or state how any individual Defendant caused or

1 personally participated in causing a deprivation of Plaintiff's constitutionally
2 protected rights. *See Arnold v. Int'l Bus. Machines Corp.*, 637 F.2d 1350, 1355
3 (9th Cir. 1981); *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir. 1989). ECF No. 6 at
4 4–7.

5 The Court cautioned Plaintiff that if he failed to amend his complaint as
6 directed, the Court would dismiss it for failure to state a claim under 28 U.S.C. §§
7 1915(e)(2) and 1915A(b)(1). *Id.* at 11. Plaintiff did not comply with the Court's
8 directives and has filed nothing further in this action. Therefore, it appears that
9 Plaintiff has abandoned this litigation.

10 For the reasons set forth above and in the Order to Amend or Voluntarily
11 Dismiss Complaint, ECF No. 6, **IT IS ORDERED** that this action is **DISMISSED**
12 for failure to state a claim upon which relief may be granted under 28 U.S.C. §§
13 1915(e)(2) and 1915A(b)(1).

14 Accordingly, **IT IS HEREBY ORDERED:**

15 (1) The complaint, **ECF No. 1**, is **DISMISSED** for failure to state a claim
16 upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2) and
17 1915A(b)(1), but **without prejudice** to Plaintiff pursuing appropriate
18 state appellate and federal habeas relief.

19 (2) Based on this Court's reading of *Washington v. Los Angeles Cty.*

20 *Sheriff's Dep't*, 833 F.3d 1048 (9th Cir. 2016), this dismissal will **NOT**
21 count as a "strike" pursuant to 28 U.S.C. § 1915(g).

1 (3) This case is **DISMISSED** and **CLOSED**.

2 (4) The Court certifies that any appeal of this Order would not be taken in
3 good faith and would lack any arguable basis in law or fact.

4 **IT IS SO ORDERED.** The District Court Clerk is **DIRECTED** to enter
5 this Order, enter judgment, provide copies to Plaintiff, and **CLOSE** the file.

6 **DATED** January 31, 2024.

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8 *s/ Rosanna Malouf Peterson*
9 ROSANNA MALOUF PETERSON
10 Senior United States District Judge
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